

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY 3 1999

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers' Long)
Distance Carriers)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CC Docket No. 94-129

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF AMERICA ONLINE, INC.

George Vradenburg, III
Jill A. Lesser
Steven N. Teplitz
AMERICA ONLINE, INC.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 530-7878

Donna Lampert
Donna N. Lampert Associates, P.C.
701 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20004
(202) 393-6410
Counsel for AMERICA ONLINE, INC.

Dated: May 3, 1999

No. of Copies rec'd at 4
List ABCDE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	CC Docket No. 94-129
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers' Long)	
Distance Carriers)	

REPLY COMMENTS OF AMERICA ONLINE, INC.

America Online, Inc. ("AOL"), by its counsel, hereby submits these Reply Comments in response to the Second Report and Order and Further Notice of Proposed Rulemaking ("FNPRM") concerning subscriber carrier selection changes.^{1/} These Reply Comments address only the limited issue of consumer use of electronic letters of agency ("LOAs") as a means of confirming preferred carrier ("PC") change requests. AOL urges the Federal Communications Commission ("FCC" or "Commission") to hold that the use of the Internet for PC change requests will help minimize unauthorized carrier changes ("slamming"), foster consumer choice in telecommunications services, and promote electronic commerce, thereby substantially serving the public interest.

^{1/} See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, FCC 98-334, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (released Dec. 23, 1998).

I. INTRODUCTION AND SUMMARY

AOL strongly supports the Commission's continued efforts to deter slamming and recognizes the serious concerns that arise when consumers fall victim to unauthorized carrier changes.^{2/} In attempting to curb this detrimental practice, however, the Commission must be careful not to undermine consumer choice in telecommunications service providers and impede robust competition by increasing costs and inefficiencies. Through the services of AOL and other Internet Service Providers ("ISPs"), consumers can access, via the Internet, a wealth of information that ensures that they are well-informed in the choices they make regarding their preferred carrier selection. Allowing consumers to change their preferred carriers using the Internet will further empower consumers as they confront the increasingly wide array of choices among telecommunications services and carriers. As the record in this proceeding indicates, electronic LOAs promote the FCC's policy of balancing "the industry's need for flexibility in marketing its services . . . and the need to protect consumers from deceptive marketing tactics."^{3/}

Through the Internet, consumers can obtain more comprehensive information about their competitive carrier choices more easily than through any other means. The medium also offers carriers the ability to realize cost savings as they migrate ordering, billing, customer service and other functions traditionally performed offline to the online world. Critically, the Internet also offers consumers greater control over PC changes than other mechanisms, as there are a number of security features that are inherent in the Internet that do not exist elsewhere. Whereas signatures on paper LOAs may be easily forged, before a PC change can be made over the Internet, a consumer must take a number of steps which help assure that slamming will not

^{2/} Headquartered in Dulles, Virginia, AOL is currently the leading Internet online company with operations in the United States and internationally. The vast majority of AOL's members today are residential consumers, using the service for personal education, information, recreation and entertainment.

^{3/} In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560, 9562 at ¶ 4 (1995).

occur. For example, a consumer is likely to have been required to supply a confidential password to the ISP for online access. The consumer is then likely to supply additional information, such as his/her mother's maiden name and/or credit card information to the telecommunications carrier selected.

In short, in an era of explosive growth in the number of telecommunications choices, the Internet can empower consumers to make knowledgeable choices and promote cost-efficient services. Given these benefits, the FCC should find that allowing consumers to change their preferred carriers through the Internet is in the public interest and should adopt rules that explicitly set forth the ways in which such PC changes can be lawfully made.

II. ELECTRONIC LOAs THAT USE PERSONAL INFORMATION ARE MORE RELIABLE THAN OTHER LOAs, AND THE FCC SHOULD SPECIFICALLY AUTHORIZE THEIR USE AS A MEANS OF IMPLEMENTING PREFERRED CARRIER CHANGES

For consumers, the Internet offers unprecedented access to information, including price and service data on competing carriers and their offerings, as well as a convenient way to shop for services that avoids high-pressure sales tactics and telemarketing calls.^{4/} For carriers, the Internet is a cost-effective way to win new customers.^{5/} And unlike alternative methods that consumers use to change their preferred carriers, the Internet actually increases the likelihood that preferred carrier changes will occur only when the consumer intends such changes be made.

As some commenters note, not only must consumers affirmatively initiate the change process by accessing carriers' online information, they are usually required to supply a credit

^{4/} The FCC itself recently underscored the importance of the Internet as a consumer informational tool when it required carriers to post their rates on their website. See 47 CRF § 42.10 (1999); In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace, Implementation of Section 254(g), Second Order on Reconsideration and Erratum, CC Docket No. 96-91, Rel. Mar. 31, 1999.

^{5/} See, e.g., Comments of Qwest at 16 ("the Internet is proving itself to be a safe and efficient method of promoting telecommunications services and signing up new subscribers"). See also FNPRM at ¶ 169.

card number and expiration date before the change order is completed – more than is required using paper LOAs.^{6/} Security increases if the changes are made through closed user groups like AOL, since consumers must also have supplied personal information in order to become an AOL member and must type in a confirmed personal password to access their online accounts. Thus, before they can make a PC change, such subscribers must provide both personal information to the carrier as well as the confidential information to the ISP who supplies their Internet access accounts. Under these circumstances, it is much less likely that a PC change effected over the Internet would be made by an unauthorized party than in other situations.

While the FNPRM expresses concerns about the potential for falsified electronic LOAs because they would not contain a handwritten signature or independent verification as has been previously accepted, these concerns are misplaced. The fact is that not only can electronic LOAs that are accompanied by personal information be authenticated at least as reliably as handwritten signatures, they may well be more reliable. Indeed, as long as carriers obtain the customer's name and at least one additional piece of personal identifying information, the PC change should be considered presumptively valid.

Most commenters that address this issue agree that electronic LOAs should be considered valid without further verification as long as they are submitted with personal identifying information, such as the subscriber's credit card number, social security number, birth date, or mother's maiden name.^{7/} As these parties note, an electronic LOA that includes personal information such as a social security number or birth date is just as, or more, likely to be authentic as other verification methods.⁸ While unscrupulous marketers might conceivably be

^{6/} See, e.g., Comments of Tel-Save at 13-17.

^{7/} See, e.g., Comments of Excel at 4.

⁸ See, e.g., Comments of Frontier at 8.

able to obtain such personal information and submit it over the Internet to make unauthorized carrier changes, this seems even less likely than simple forgery or falsification of handwritten LOAs. In fact, since there is often no commission paid for PC changes made over the Internet, it is less likely that even this type of deceptive practice would occur.^{9/}

To be sure, some commenters posit scenarios that call into question the reliability of PC changes made over the Internet.^{10/} They suggest that computer hackers could slam unsuspecting consumers, that consumers themselves could authorize PC changes inadvertently by clicking on the wrong hyperlink, and that users that share computers could change each other's telecommunications carriers without consent. While no mechanism is 100% failsafe, the reality is that these scenarios are far-fetched. Not only is an unauthorized carrier change the least of the threats posed by a computer hacker who obtains a consumer's credit card number, birth date, and social security number, no commenter provides any evidence that a hacker has ever slammed a telephone customer, much less that this is a pervasive problem.

As for inadvertent carrier changes resulting from misleading labels on hyperlinks, the Commission's rules already provide that an LOA must conspicuously notify the subscriber that submission of the form will authorize a carrier change. The same would hold true for electronic LOAs. Moreover, if carriers use misleading LOA submission screens, the existing rules should be enforced rather than adopting a prohibition on Internet LOAs. Finally, the risk that another user of the subscriber's computer would make an unauthorized PC change is no more likely than unauthorized changes by other users of the subscriber's telephone. In any event, the risk would be minimized by requiring the submission of personal identifying information.

^{9/} See, e.g., Comments of MCI/WorldCom at 23.

^{10/} See, e.g., Comments of the New York Public Service Commission at 7.

Of course, no set of anti-slamming rules can foreclose every potential type of abuse. As such, the Commission must balance its efforts to reduce slamming against the burdens it would impose on legitimate carrier marketing practices and the reduction of convenience and choice for consumers. In the case of electronic LOAs, this balance will be best achieved by requiring the submission of personal identifying information that serves to authenticate the subscriber's identity to a reasonable degree of probability, i.e., to make the electronic LOA at least as reliable as a handwritten signature on a paper LOA. In this vein, the Commission should establish a list of specific items of personal information that will be considered adequate to validate a PC change submitted in electronic form in order to provide certainty to carriers and their marketing agents. This list could include, for example, information such as credit card data, the subscribers mother's maiden name, or a social security number.

Notably, the alternative methods of verifying carrier changes approved by the FCC are more costly for carriers and less convenient for consumers. For example, unlike tapes of verification calls or hard copies of hand-signed LOAs, electronic LOAs and the accompanying authenticating information can be stored in a readily accessible form at little cost. In contrast to third party verification calls made by live operators, Internet-based LOAs are uniform, avoiding disputes about whether the customer was given incomplete or misleading information by the verification operator or sales representative. In fact, consumers can complete electronic LOAs at any time of the day or night without the need for a live verification operator on duty and there is no need to make additional telephone calls or mail in a signed LOA form.

These advantages are especially important to new competing carriers, who often seek to win new customers by cutting costs and lowering prices. The benefits of electronic LOAs can also assist regulators, who must assess and resolve consumer complaints as efficiently and effectively as possible. By establishing clear standards for the use of electronic LOAs submitted

over the Internet, the Commission can streamline the burdens associated with enforcement of and compliance with its anti-slamming rules. It would make no sense under these circumstances for the FCC to prevent consumers from harnessing the power and potential of the Internet by barring them from changing carriers online, by requiring the submission of separate paperwork, or by imposing other redundant verification procedures.

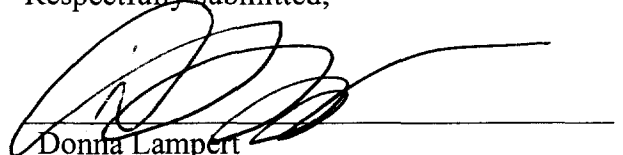
III. CONCLUSION

For the reasons set forth above, the Commission should embrace the Internet and the pro-consumer, pro-competitive benefits it offers by finding that the use of electronic LOAs as a means of verifying PC changes is in the public interest. Accordingly, the Commission should adopt rules expressly allowing consumers to make carriers changes in this manner.

George Vradenburg, III
Jill A. Lesser
Steven N. Teplitz
AMERICA ONLINE, INC.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 530-7878

Dated: May 3, 1999

Respectfully submitted,



Donna N. Lampert
Donna N. Lampert Associates, P.C.
701 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20004
(202) 393-6410

Counsel for AMERICA ONLINE, INC.

CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 3rd day of May, 1999, I caused copies of the foregoing "REPLY COMMENTS OF AMERICA ONLINE" to be served by U.S. mail, first class, postage prepaid, or by hand delivery (*) on the following;



Cheryl Flood

*Lawrence Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Yog Varma, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Dorothy Attwood
Chief
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Glenn Reynolds
Deputy Chief
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Kevin Martin, Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
The Portals - 8-A302
445 12th Street, S.W.
Washington, D.C. 20554

*Tom Power, Legal Advisor
Office of Chairman Kennard
Federal Communications Commission
The Portals - 8-B201
445 12th Street, S.W.
Washington, D.C. 20554

*Linda Kinney, Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
The Portals - 8-B115
445 12th Street, S.W.
Washington, D.C. 20554

*Kyle Dixon, Legal Advisor
Office of Commissioner Powell
Federal Communications Commission
The Portals - 8-A204
445 12th Street, S.W.
Washington, D.C. 20554

*Sarah Whitesell, Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
The Portals - 8-C302
445 12th Street, S.W.
Washington, D.C. 20554

*Kimberly Parker
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*International Transcription Service
Federal Communications Commission
1231 20th Street, N.W.
Washington, D.C. 20036